

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DEVONTE B. HARRIS,

Plaintiff,

v.

BORQUEZ, *et al.*,

Defendants.

Case No. 1:23-cv-00046-ADA-BAM (PC)

ORDER DISCHARGING ORDER TO SHOW
CAUSE WHY DEFENDANT QUEVEDO
SHOULD NOT BE DISMISSED
(ECF No. 17)

ORDER CLARIFYING DEADLINE FOR
DEFENDANT QUEVEDO TO FILE
RESPONSE TO COMPLAINT
(ECF No. 27)

**Response to Complaint Due: October 12,
2023**

Plaintiff Devonte B. Harris (“Plaintiff”) is a state prisoner proceeding *pro se* in this civil rights action under 42 U.S.C. § 1983. This action proceeds against Defendants Borquez and Quevedo¹ for deliberate fabrication of evidence in violation of the Fourteenth Amendment.

On March 28, 2023, the Court found service of the complaint appropriate and directed service on Defendants under the Court’s E-Service pilot program. (ECF No. 14.) Pursuant to that order, the service order, summonses, and the operative complaint were served via email on the California Department of Corrections and Rehabilitation (“CDCR”). On May 30, 2023, CDCR filed a Notice of Intent to Not Waive Service indicating that Defendants Borquez and Quevedo

¹ Erroneously sued as “Queredo.”

1 could not be identified. (ECF No. 16.) Accordingly, on June 1, 2023, the Court issued an order
2 for Plaintiff to show cause why Defendants Borquez and Quevedo should not be dismissed from
3 this action for failure to provide sufficient information to effectuate service. (ECF No. 17.)

4 On August 22, 2023 and August 23, 2023, Defendant Borquez, notwithstanding CDCR's
5 earlier indication that she could not be identified for service of process, filed a waiver of service
6 of process. (ECF Nos. 21, 22.) Defendant Borquez's response to the complaint is currently due
7 on or before September 21, 2023. (ECF No. 23.)

8 On August 28, 2023, the Court granted in part Plaintiff's second motion for extension of
9 time to show cause why Defendant Quevedo should not be dismissed from this action for failure
10 to provide sufficient information to effectuate service. (ECF No. 25.)

11 However, on September 13, 2023, Defendant Quevedo also filed a waiver of service of
12 process. (ECF No. 27.)

13 Pursuant to the Court's E-Service Order, "[a] defendant who timely waives service need
14 not serve an answer to the complaint until 60 days after the waiver of service of process was
15 sent." (ECF No. 14, p. 3.) Further, "[f]or any defendant that the CDCR advises will be waiving
16 service, the date the CDCR files its Notice of E-Service Waiver will be considered the date the
17 request for waiver was sent." (*Id.*)

18 Defendant Quevedo's waiver of service states that the answer is due "within 30 days after
19 9/12/2023," (ECF No. 27, p. 1), while the Court's docket entry for the waiver of service states
20 that Defendant's answer is due on November 13, 2023. Further, the USM-285 attached to the
21 waiver of service indicates that while a waiver packet was sent on June 27, 2023, the Date of
22 Service is blank, and the date the signed waiver was returned is September 12, 2023. (*Id.* at 2.)
23 Finally, as CDCR never advised that Defendant Quevedo would be waiving service through a
24 Notice of E-Service Waiver, the May 30, 2023 Notice of Intent to Not Waive Service is not
25 applicable for calculating the answer deadline.

26 By the instant order, the Court clarifies that pursuant to the March 28, 2023 E-Service
27 Order and in light of the conflicting information in the record, Defendant Quevedo's answer or
28 other responsive pleading is due within 30 days after September 12, 2023, the latest apparent date

1 of service for the waiver form. Should Defendant Quevedo require additional time to respond to
2 the complaint, she may file a motion for an extension of time setting forth good cause in support
3 of the request.

4 In addition, as Defendant Quevedo has now filed an executed waiver of service signed by
5 counsel, the Court finds it appropriate to discharge the order to show cause. Plaintiff is relieved
6 of the obligation to provide further identifying information for Defendant Quevedo or Defendant
7 Borquez.

8 Accordingly, IT IS HEREBY ORDERED as follows:

- 9 1. The June 1, 2023 order to show cause why Defendants Borquez and Queredo (Quevedo)
10 should not be dismissed from this action for failure to provide sufficient information to
11 effectuate service, (ECF No. 17), is DISCHARGED; and
12 2. Defendant Quevedo shall file an answer or other response to the complaint on or before
13 **October 12, 2023.**

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15 IT IS SO ORDERED.

16 Dated: September 14, 2023

17 /s/ Barbara A. McAuliffe
18 UNITED STATES MAGISTRATE JUDGE
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